

REMARKS

In order to place the present application in better condition for allowance, the foregoing amendment to the claims is submitted, merely involving cancellation of all claims except claims 5 and 11. Also, reopening of prosecution is requested if the final rejection of claims 5 and 11 is not withdrawn, in as much as it is based on inadequately stated grounds and is therefore premature as hereafter explained.


The final rejection of claim 11, as stated in paragraph 6 on page 2 of the final Office action, "stands for reasons of record in paragraph 9 of paper #3". Such previously stated basis relied on for final rejection of claim 11 now under consideration, was however applied to a different claim. Thus, the present version of claim 11 now under consideration emphasizes certain patentable distinctions as compared to the earlier version of claim 11 under rejection in the paper #3.

Accordingly, the final Office action is inadequate since the basis for the final rejection of claim 11 now under consideration, is based solely on a mere reference to a different claim so as to require clarification. Also, arguments were set forth in behalf of applicant in the previous amendment filed July 11, 2002, relating to the aforesaid patentable distinctions of claim 11 now under consideration, as referred to in paragraph 7 on page 3 of the final Office action. Such patentable distinctions are established by the claim recitation, "in-situ infusion of the fire resisting agent into the barrier layer before its attachment achieves an unexpectedly beneficial result in reducing installation costs". It was also pointed out in behalf of applicant in the aforesaid previous amendment, that hindsight speculation was being improperly relied in support of a judgment that the aforesaid patentable distinctions are obvious. The only basis set forth in the final Office action (page 2) to contest applicant's aforesaid argument as to the improper use of

hindsight speculation, is an unsupported conclusionary statement that, "Applicant's arguments filed July 11, 2002 have been fully considered but are not persuasive".

Accordingly, reconsideration is in order so as to either allow claims 5 and 11 because of patentable distinctions to which they are limited by recitation, or to reopen prosecution of the application in view of the inadequacy and/or prematurity of the final rejection as hereinbefore pointed out. Another Office action in response hereto is therefore expected in advance of the Nov. 22, 2002 appeal deadline, either indicating an allowance of the application based on claims 5 and 11 or reopening prosecution so as to replace the present final rejection of claims 5 and 11 with an adequately stated rejection based on new grounds, to thereby avoid filing of a petition by applicant pursuant to Section 714.12 M.P.E.P.

Respectfully submitted,



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